

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7396

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALEXANDER FAUST, a/k/a Stanka,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Dennis W. Shedd, District Judge. (CR-94-773)

Submitted: January 31, 2002

Decided: February 6, 2002

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Alexander Faust, Appellant Pro Se. Beth Drake, Assistant United States Attorney, Kelly Elizabeth Shackelford, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Alexander Faust pled guilty to conspiracy to distribute cocaine and cocaine base and was sentenced on May 8, 1995. He filed a notice of appeal on May 7, 2001, seeking review of his sentence pursuant to 18 U.S.C. § 3742 (1994). However, this statute governs direct criminal appeals and is unavailable to Faust who failed to file a timely direct appeal. Criminal defendants have ten days from the entry of the judgment or order at issue to file a notice of appeal. Fed. R. App. P. 4(b). The appeal periods established by Rule 4 are mandatory and jurisdictional. Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978). Because Faust filed his notice of appeal approximately six years outside the appeal period, we lack jurisdiction to consider the merits of the appeal.

To the extent that Faust seeks to appeal the district court's November 23, 1999, denial of his 28 U.S.C.A. § 2255 (West Supp. 2001) motion, we deny a certificate of appealability and dismiss the appeal for lack of jurisdiction because Faust's notice of appeal is also untimely as to that order. Parties are accorded sixty days after entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). Furthermore, this court has previously reviewed that order on appeal, and affirmed on

the reasoning of the district court. See United States v. Faust, No. 99-7673, 2000 WL 347051 (4th Cir. Mar. 15, 2000) (unpublished).

We dismiss this appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED